

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs November 21, 2005

GARRY RECTOR v. DACCO, INC.

Appeal from the Circuit Court for Putnam County

No. 04J0235 John A. Turnbull, Judge

No. M2005-00294-COA-R9-CV - Filed on June 26, 2006

This appeal involves the application of the saving statutes in Tenn. Code Ann. § 28-1-105(a) (2000) and Tenn. Code Ann. § 28-1-115 (2000) to claims brought under the Tennessee Human Rights Act. An employee initially filed a complaint in the United States District Court asserting claims under both federal and state law. The employee voluntarily dismissed his complaint but later filed a second identical complaint in the District Court. The District Court dismissed the federal claims in the employee's second complaint and declined to exercise supplemental jurisdiction over the employee's state claims. Thereafter, the employee filed a complaint in the Circuit Court for Putnam County asserting only state claims. The employer moved to dismiss the complaint on the grounds that Tennessee's saving statutes do not apply to claims under the Tennessee Human Rights Act and, even if they do, that state law prevented the employee from filing suit after the expiration of the one-year saving period. The trial court denied the employer's motion to dismiss but permitted the employer to apply for a Tenn. R. App. P. 9 appeal. We granted the interlocutory appeal and have now determined that the trial court erred by concluding that the employee's complaint was timely filed.

Tenn. R. App. P. 9 Interlocutory Appeal; Order of the Circuit Court Reversed

WILLIAM C. KOCH, JR., P.J., M.S., delivered the opinion of the court, in which WILLIAM B. CAIN and PATRICIA J. COTTRELL, JJ., joined.

Christopher W. Cardwell and Mary Taylor Gallagher, Nashville, Tennessee, for the appellant, DACCO, Inc.

W.I. Howell Acuff, Cookeville, Tennessee, for the appellee, Garry Rector.

OPINION

I.

Garry Rector has worked at DACCO, Inc.'s manufacturing plant in Putnam County since 1982. His parents also work at the plant. According to Mr. Rector, his relationship with DACCO soured in the late 1990s because he became "involved" in a discrimination complaint his mother filed against DACCO and because of an injury he received in an automobile accident in 1998. In November 2000, Mr. Rector filed a charge against DACCO with the Equal Employment Opportunity

Commission alleging that DACCO had repeatedly retaliated against him because of his involvement in his mother's charge. He also alleged that DACCO was discriminating against him because of a disability stemming from the 1998 accident. On March 30, 2001, the EEOC issued Mr. Rector a right-to-sue letter after its investigation failed to confirm his claims of discrimination.

On June 28, 2001, Mr. Rector filed his first complaint against DACCO in the United States District Court for the Middle District of Tennessee. In addition to his claims under the federal anti-discrimination statutes, Mr. Rector asserted claims under the Tennessee Human Rights Act.¹ Mr. Rector voluntarily dismissed his complaint on December 12, 2001. On October 25, 2002, he filed a second complaint in the District Court that was substantially identical to the first.

On June 4, 2003, the District Court dismissed Mr. Rector's federal claims with prejudice because his second complaint had not been filed within ninety days after his receipt of the EEOC's right-to-sue letter.² In addition to dismissing all of Mr. Rector's claims under federal law, the District Court declined to exercise supplemental jurisdiction³ over his remaining state law claims under the Tennessee Human Rights Act and dismissed these claims without prejudice.

Almost one year later, on June 2, 2004, Mr. Rector filed a complaint against DACCO in the Circuit Court for Putnam County raising the same Tennessee Human Rights Act claims he had included in the two complaints he had filed in federal court. On October 22, 2004, DACCO moved to dismiss the complaint on the ground that Mr. Rector had failed to file his complaint within the Tennessee Human Rights Act's one-year statute of limitations.⁴ Mr. Rector responded that his complaint was timely under both the general saving statute in Tenn. Code Ann. § 28-1-105(a) (2000) and Tenn. Code Ann. § 28-1-115 (2000), the saving statute specifically applicable to dismissals of claims in federal court for lack of jurisdiction.⁵

DACCO argued in the trial court that neither saving statute applies to claims under the Tennessee Human Rights Act. It argued in the alternative that even if the saving statutes applied to Mr. Rector's claims, they should not be construed to permit the refiling of a complaint more than one year after the District Court's dismissal of Mr. Rector's first complaint. On January 20, 2005, the trial court filed an order denying DACCO's motion to dismiss but granting DACCO permission to

¹Tenn. Code Ann. § 4-21-101 to -1004 (2005).

²See 42 U.S.C.A. § 2000e-5(f)(1) (West 2003). A voluntary dismissal does not toll the running of the ninety-day limitations period for filing a lawsuit based on certain federal anti-discrimination statutes following receipt of a right-to-sue letter from the EEOC. *Baldwin County Welcome Center v. Brown*, 466 U.S. 147, 149-51, 104 S. Ct. 1773, 1724-26 (1984).

³See 28 U.S.C.A. § 1367(c)(3) (West 1993).

⁴See Tenn. Code Ann. § 4-21-311(d).

⁵These statutes are frequently, but incorrectly, referred to as "savings statutes." See BLACK'S LAW DICTIONARY 1344 (7th ed. 1999).

pursue a Tenn. R. App. P. 9 interlocutory appeal. On February 22, 2005, we granted DACCO's application for an interlocutory appeal.

II.

THE APPLICATION OF TENNESSEE'S SAVING STATUTES TO CLAIMS BROUGHT UNDER THE TENNESSEE HUMAN RIGHTS ACT

DACCO first argues that the trial court erred by permitting Mr. Rector to take advantage of Tenn. Code Ann. § 28-1-105(a) and Tenn. Code Ann. § 28-1-115 because saving statutes do not apply to claims filed under the Tennessee Human Rights Act. We held to the contrary in a case decided shortly after the trial court conducted its hearing on DACCO's motion to dismiss. *Parnell v. APCOM, Inc.*, No. M2003-00178-COA-R3-CV, 2004 WL 2964723, at *6 (Dec. 21, 2004) (No Tenn. R. App. P. 11 application filed). DACCO invites us to reconsider our *Parnell* decision. We respectfully decline the invitation.

DACCO's arguments mirror those made in *Parnell*. Specifically, DACCO insists that the saving statutes do not apply to claims brought under the Tennessee Human Rights Act because the Act contains its own internal statute of limitations. We addressed this argument in *Parnell*, noting that "[t]here are numerous remedial statutes which have internal statutes of limitation, like the THRA, yet the saving statute applies." *Parnell v. APCOM, Inc.*, 2004 WL 2964723, at *6.⁶ We ultimately concluded that Tennessee's saving statutes apply to claims brought under the Tennessee Human Rights Act. Nothing in DACCO's brief causes us to second-guess our decision. Accordingly, we reaffirm our holding in *Parnell* that both Tenn. Code Ann. § 28-1-105(a) and Tenn. Code Ann. § 28-1-115 apply to claims brought under the Tennessee Human Rights Act.

III.

THE APPLICATION OF TENN. CODE ANN. § 28-1-115 TO MR. RECTOR'S THIRD COMPLAINT

DACCO also argues that even if the saving statutes are applicable to Mr. Rector's claims, the complaint he filed in state court is nevertheless time-barred because it was not filed within one year after he voluntarily dismissed his first federal complaint. It insists that Tenn. Code Ann. § 28-1-115 gives litigants no greater rights than Tenn. Code Ann. § 28-1-105(a). This is the first occasion for this court to address the propriety of the successive use of Tenn. Code Ann. § 28-1-105(a) and Tenn. Code Ann. § 28-1-115.

A.

Statutes of limitations preserve fairness and justice by preventing undue delay in filing lawsuits and thereby ensuring that evidence is preserved and that fact-finding is not obstructed by

⁶For example, the general saving statute has been held to apply to claims brought under the Tennessee Worker's Compensation Act even though it contains an internal statute of limitations. *Dukes v. Montgomery County Nursing Home*, 639 S.W.2d 910, 912-13 (Tenn. 1982); *Bradshaw v. Claridy*, 213 Tenn. 297, 303, 375 S.W.2d 852, 855 (1964); *Rye v. DuPont Rayon Co.*, 163 Tenn. 95, 99-100, 40 S.W.2d 1041, 1042-43 (1931).

the passage of time. *Potts v. Celotex Corp.*, 796 S.W.2d 678, 681-82 (Tenn. 1990); *Owen v. Summers*, 97 S.W.3d 114, 123 (Tenn. Ct. App. 2001). However, the Tennessee General Assembly has recognized that limited relief from the operation of a statute of limitations may be warranted in certain narrowly defined circumstances. One of these circumstances arises when a timely filed complaint is dismissed, voluntarily or involuntarily, “upon any ground not concluding the plaintiff’s right of action.” Tenn. Code Ann. § 28-1-105(a). In this circumstance, the statute permits the plaintiff to file a second complaint based on the same cause of action within one year from the date of the dismissal of the first complaint.

Even though the Tennessee Supreme Court has given Tenn. Code Ann. § 28-1-105(a) a “broad and liberal construction,”⁷ it has stopped far short of permitting the statute to be used to perpetuate “continuous and unending litigation.” *Reed v. Cincinnati, N.O. & T.P. Ry.*, 136 Tenn. 499, 503, 190 S.W. 458, 459 (1916); *see also Turner v. N.C. & St. L. Ry.*, 199 Tenn. 137, 142, 285 S.W.2d 122, 124 (1955) (noting that “[l]itigation should have some terminus”). Accordingly, Tennessee’s courts have consistently declined to construe Tenn. Code Ann. § 28-1-105(a) to permit plaintiffs to evade statutes of limitations by filing endless successive complaints involving the same cause of action simply because each later complaint was filed within one year after the dismissal of the preceding complaint. Rather, the courts have made it clear that all complaints after the first one must be filed within one year from the date of the dismissal of the first complaint. *Balsinger v. Gass*, 214 Tenn. 343, 353-54, 379 S.W.2d 800, 805 (1964); *Creed v. Valentine*, 967 S.W.2d 325, 326 (Tenn. Ct. App. 1997).⁸

B.

The court decisions prohibiting tacking one-year saving periods under Tenn. Code Ann. § 28-1-105(a) were well known in 1984 when the Tennessee General Assembly enacted Tenn. Code Ann. § 28-1-115.⁹ Neither Tenn. Code Ann. § 28-1-105(a) nor Tenn. Code Ann. § 28-1-115 explicitly addresses whether the two statutes may be used in the same case to provide a second one-year saving period when complaints are filed in federal, as opposed to state, courts. Accordingly, we must consult the history of the enactment of Tenn. Code Ann. § 28-1-115 to determine whether the General Assembly intended it to be used as Mr. Rector seeks to use it in this case.

The legislative debates and materials regarding Tenn. Code Ann. § 28-1-115 reveal that the General Assembly had only one purpose in mind when it enacted the statute. The General Assembly was concerned that Tenn. Code Ann. § 28-1-105(a) might not apply when the initial complaint was

⁷ *Henley v. Cobb*, 916 S.W.2d 915, 916 (Tenn. 1996); *Dukes v. Montgomery County Nursing Home*, 639 S.W.2d at 912-13.

⁸ *See also* Donald F. Paine, *The Category of Tough: Nonsuits III*, Tenn. B.J., Sept.-Oct. 1998, at 16 (“[Y]ou get only one one-year saving period one time. You cannot tack saving statute years each time you take a nonsuit. Never, never, ever voluntarily dismiss your client’s action when you’ve already used up that single saving year.”).

⁹ *See* Act of Apr. 2, 1984, ch. 520, § 1, 1984 Tenn. Pub. Acts 131, 131.

filed in federal court and later dismissed for lack of jurisdiction.¹⁰ Therefore, it enacted Tenn. Code Ann. § 28-1-115 solely to make it clear that plaintiffs who file their initial complaint in federal court enjoy the same one-year saving period that is available to plaintiffs who file their initial complaint in state court under Tenn. Code Ann. § 28-1-105(a).

Thus, Tenn. Code Ann. § 28-1-115 largely duplicates a remedy that was already available under Tenn. Code Ann. § 28-1-105(a). We find no indication in the language of Tenn. Code Ann. § 28-1-115 or in its legislative history that the General Assembly intended to permit persons who file their initial complaint in federal court to have greater relief from the statute of limitations than persons who file their initial complaint in state court. Likewise, we find no basis to conclude that the General Assembly intended to permit plaintiffs to invoke both Tenn. Code Ann. § 28-1-105(a) and Tenn. Code Ann. § 28-1-115 successively with regard to the same cause of action to obtain two separate one-year extensions of the statute of limitations.

Mr. Rector voluntarily dismissed his first complaint filed in federal court on December 12, 2001. By operation of Tenn. Code Ann. § 28-1-105(a),¹¹ he had one year – or until December 12, 2002 – to refile his complaint in either state or federal court. Any complaint filed after that time is untimely under state law. It necessarily follows that the complaint Mr. Rector filed in state court on June 2, 2004 is time-barred.

C.

Six years after the General Assembly enacted Tenn. Code Ann. § 28-1-115, Congress enacted the Judicial Improvements Act of 1990, Pub. L. No. 101-650, 104 Stat. 5089. One of the purposes of this Act was to codify the federal precedents involving the doctrines of “pendent” and “ancillary” jurisdiction under the name of “supplemental jurisdiction.” 13B CHARLES A. WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 3567.3 (2d ed. Supp. 2005). Congress also addressed the

¹⁰The General Assembly did not discuss any of the precedents construing Tenn. Code Ann. § 28-1-105(a) during its deliberations. While the Tennessee Supreme Court had held in *Sweet v. Electric Light Co.*, 97 Tenn. 252, 253, 36 S.W. 1090, 1090 (1896), that Tenn. Code Ann. § 28-1-105(a)’s predecessor did not apply when a federal court dismissed a complaint for lack of jurisdiction, the court expressly distanced itself from the *Sweet* decision in *Burns v. Peoples Tel. & Tel. Co.*, 161 Tenn. 382, 384-88, 33 S.W.2d 76, 77-78 (1930). Even before then, it was well established that Tenn. Code Ann. § 28-1-105(a) applies to a complaint filed first in federal court and then dismissed on any ground not concluding the plaintiff’s right of action. See, e.g., *Stuber v. Louisville & Nashville R.R.*, 113 Tenn. 305, 316, 87 S.W. 411, 413-14 (1905); *Hooper v. Railroad*, 106 Tenn. 28, 30-31, 60 S.W. 607, 608-09 (1900); see also *Green v. Prince*, 53 Tenn. App. 541, 543-47, 385 S.W.2d 127, 128-30 (1964).

¹¹It can reasonably be argued that Tenn. Code Ann. § 28-1-115 is actually narrower than Tenn. Code Ann. § 28-1-105(a). Tenn. Code Ann. § 28-1-115 applies only to complaints that have been “dismissed for lack of jurisdiction;” however, Tenn. Code Ann. § 28-1-105(a) sweeps more broadly, applying to complaints that have been dismissed “on any ground not concluding the plaintiff’s right of action.” Since specific statutes control over general ones, *State v. Davis*, 173 S.W.3d 411, 415 (Tenn. 2005); *Rutherford County v. Wilson*, 121 S.W.3d 591, 598 (Tenn. 2003), it is now highly questionable whether a plaintiff whose complaint is dismissed from federal court for any reason other than lack of jurisdiction can take advantage of either Tenn. Code Ann. § 28-1-115 or Tenn. Code Ann. § 28-1-105(a). However, we need not resolve this question in the present appeal, because Mr. Rector’s third complaint was not filed within one year of his voluntary dismissal of his first federal complaint.

dilemma faced by federal courts when they are asked to exercise supplemental jurisdiction over state law claims.¹² State statutes of limitations presented a substantial obstacle to plaintiffs' ability to pursue state law claims in state court following a federal court's decision to decline to exercise supplemental jurisdiction over them. Accordingly, Congress enacted a saving statute of its own, 28 U.S.C.A. § 1367(d),¹³ for the purpose of providing a plaintiff whose state law claim is dismissed in federal court with a limited opportunity to refile the state claim in state court.

As we construe 28 U.S.C.A. § 1367(d), Congress has decided that, notwithstanding applicable state statutes of limitations, a person filing a state law claim in federal court shall have at least thirty days within which to refile a state law claim in state court after a federal court has dismissed it. Congress has also decided that the states may provide for longer tolling periods if they desire. Thus, the question that remains to be decided is whether Tenn. Code Ann. § 28-1-115 should be construed to extend 28 U.S.C.A. § 1367(d)'s thirty-day tolling period to one year. We have concluded that the answer is no.

The General Assembly enacted Tenn. Code Ann. § 28-1-115 six years before Congress enacted 28 U.S.C.A. § 1367(d). No federal statute similar to 28 U.S.C.A. § 1367(d) existed in 1984 when the General Assembly was discussing the application of the general saving statute to complaints filed and later dismissed in federal court. The legislative history contains no indication that the members of the General Assembly were concerned about, or even aware of, the dilemma facing federal courts with regard to the exercise of their pendent or ancillary jurisdiction over state law claims. Accordingly, we have no basis to conclude that the one-year saving period in Tenn. Code Ann. § 28-1-115 reflects the General Assembly's considered decision to lengthen 28 U.S.C.A. § 1367(d)'s thirty-day tolling period to one year.¹⁴

By virtue of 28 U.S.C.A. § 1367(d), Mr. Rector had an additional thirty days to refile after the District Court declined to exercise supplemental jurisdiction over his state law claims on June

¹²In its opinion upholding the constitutionality of 28 U.S.C.A. § 1367(d) as applied to municipalities, the United States Supreme Court explained that the statute "provides an alternative to the unsatisfactory options that federal judges faced when they decided whether to retain jurisdiction over supplemental state-law claims that might be time-barred in state court." *Jinks v. Richland County*, 538 U.S. 456, 462, 123 S. Ct. 1667, 1671 (2003).

¹³28 U.S.C.A. § 1367(d) provides:

The period of limitations for any claim asserted [in federal court] under subsection (a), and for any other claim in the same action that is voluntarily dismissed at the same time as or after the dismissal of the claim under subsection (a), shall be tolled while the claim is pending [in federal court] and for a period of 30 days after it is dismissed unless State law provides for a longer tolling period.

¹⁴It would also be unreasonable to conclude that the General Assembly somehow anticipated that Congress was going to enact 28 U.S.C.A. § 1367(d) six years later. By its own terms, Tenn. Code Ann. § 28-1-115 is triggered only when a federal court dismisses a complaint for lack of jurisdiction. Technically speaking, a discretionary decision to decline to exercise supplemental jurisdiction over state law claims under 28 U.S.C.A. § 1367(c)(3) is not a "dismiss[al] for lack of jurisdiction." Tenn. Code Ann. § 28-1-115. Federal courts retain jurisdiction to consider state law claims even after all related federal law claims have been dismissed; 28 U.S.C.A. § 1367(c) simply gives them the discretion to decline to exercise it.

4, 2003.¹⁵ Mr. Rector filed his complaint in state court on June 2, 2004, approximately eleven months beyond the saving period in 28 U.S.C.A. § 1367(d). Accordingly, he is not entitled to relief from the Tennessee Human Rights Act's one-year statute of limitations under 28 U.S.C.A. § 1367(d), and the trial court's dismissal of the third complaint he belatedly filed in state court does not contravene applicable federal law or policy.

IV.

We reverse the order denying DACCO's motion to dismiss and remand the case with directions to enter an order dismissing Mr. Rector's complaint on the ground that it is time-barred. We tax the costs of this appeal to Garry Rector for which execution, if necessary, may issue.

WILLIAM C. KOCH, JR., P.J., M.S.

¹⁵The thirty-day grace period contained in 28 U.S.C.A. § 1367(d) operates independently of the one-year saving period conferred by Tenn. Code Ann. § 28-1-105(a) and Tenn. Code Ann. § 28-1-115. Tennessee's common law rule barring the successive application of Tenn. Code Ann. § 28-1-105(a), or Tenn. Code Ann. § 28-1-115 in conjunction with Tenn. Code Ann. § 28-1-105(a), has no application to 28 U.S.C.A. § 1367(d).